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In the Supreme Court of the United States

OCTOBER TERM, 1978

CONSOLIDATION COAL COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

RAYMOND J. ZITKO, PETITIONER

v.

UNITED STATES OF AMERICA

FRANCIS LEO MARKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The original opinion of the court of appeals (Pet. App. 28a-44a)[1] is reported at 560 F.2d 214. The opinions of the district court (Pet. App. 1a-20a, 21a-24a, 25a-27a) and the opinion of the court of appeals on remand from this Court (Pet. App. 47a-49a) are not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on July 25, 1978. A petition for rehearing was denied on August 29, 1978 (Pet. App. 50a). The petition for a writ of certiorari was filed on September 27, 1978, in No. 78-532, on September 28, 1978, in No. 78-537, and on October 25, 1978, in No. 78-697. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the warrants authorizing the search of various business premises owned by petitioner Consolidation Coal Company were based upon sufficient cause to satisfy the Fourth Amendment.

2. Whether petitioners Zitko and Marks have standing to challenge the search of company offices other than their own.

STATEMENT

1. On May 21, 1974, a United States Magistrate issued several warrants authorizing federal officers

[1] Unless otherwise noted, "Pet. App." refers to the appendix to the petition in No. 78-537.

to search the general office and five field offices of the Consolidation Coal Company (Consolidation) in Georgetown, Ohio, for evidence of violations of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 *et seq.*[2] Based on lengthy affidavits of two officials of the Department of the Interior, William Holgate and Thomas Jeskey, the magistrate found probable cause to believe that the premises sought to be searched contained "exposed respirable coal dust sampling cassettes and accompanying data cards and records relating to respirable coal dust samples" (Pet. App. 51a-52a) that had been used for the purpose of circumventing federal laws for monitoring atmospheric conditions in mines that cause "black lung" disease. See 30 U.S.C. 819(b), (c) and (d); 30 U.S.C. 842; 30 C.F.R. Part 70 (1977).

The next day, searches were conducted pursuant to the warrants at the designated offices, and a number of incriminating cassettes and records were seized (Pet. App. 52a-56a, 67a-69a, 75a, 79a-83a, 87a-88a, 92a-94a). In August 1975, a multi-count indictment was returned by a grand jury of the United States District Court for the Southern District of Ohio charging petitioners with conspiracy, in violation of 18 U.S.C. 371, knowingly submitting false statements to the Department of the Interior, in violation of 30 U.S.C. 819(d), and willfully violating mandatory coal

[2] Warrants were also issued to search three additional mining offices operated by Consolidation, but no evidence was seized at one site and material seized at the other two sites was voluntarily returned to the company by the government.

mine health and safety standards, in violation of 30 U.S.C. 819(b) and (c).

On June 11, 1976, without first holding an evidentiary hearing, the district court granted petitioner Consolidation Coal Company's motion to suppress all evidence seized in the six searches on the ground that the warrants were not supported by probable cause (Pet. App. 1a-20a). In a separate order dated October 4, 1976, the district court held that petitioners Zitko and Marks, as corporate employees with supervisory responsibilities over the personnel and records at the offices searched, had standing to contest the six searches, and therefore it also suppressed the evidence as to them (Pet. App. 21a-24a). The government appealed, and the court of appeals reversed the suppression orders (Pet. App. 28a-44a). On June 5, 1978, this Court granted certiorari (Pet. Nos. 77-557, 77-606 and 77-622), vacated the court of appeals' judgment and remanded the case for further consideration in light of *Marshall* v. *Barlow's, Inc.*, No. 76-1143 (May 23, 1978), and *Michigan* v. *Tyler*, No. 76-1608 (May 31, 1978) (Pet. App. 46a). On remand, the Sixth Circuit adhered to its original conclusion that the district court had erred in granting petitioners' motions to suppress (Pet. App. 47a-49a).

2. The search warrant affidavits submitted by inspectors Holgate and Jeskey (Pet. App. 57a-65a) stated that on May 15, 1974, they met with an unnamed former company employee who had worked at Consolidation's Franklin No. 25 and Franklin Highwall mines. According to the former employee, who

spoke from personal knowledge, he had been instructed by his supervisors to maintain a supply of extra cassettes that contained respirable dust samples collected under controlled conditions. The former employee was directed to send all dust cassettes collected under actual mining conditions to technicians at Consolidation's laboratory, where the cassette could be opened and its contents analyzed. If a legitimate sample was found to offend the mandatory federal health standard, an artificially "clean" (low) sample, prepared by company technicians under controlled conditions, would be substituted and the authenticating documentation altered to conform (*id.* at 58a-60a). The former employee said that he had been told by certain laboratory technicians, whom he identified by name, that similar practices were followed at other Consolidation mines located within the central region of Ohio (*id.* at 60a).

Moreover, the former employee informed the federal inspectors that a list of all cassette samples actually collected as well as those subsequently voided was kept on a bulletin board at the environmental office at the Franklin No. 25 mine, and he gave Inspector Jeskey a xerox copy of a list taken from the mine office showing that certain cassettes for collecting "high risk dust samples" (*id.* at 59a, 63a-64a) had been voided. The former employee also said that a brown master book containing a listing of all voided and fictitious samples was kept in a desk drawer at the mine office, along with a number of cassettes containing fictitious samples (*id.* at 59a-60a).

Finally, Inspector Jeskey's affidavit related that on May 16, 1974, the day after speaking with the former employee, he went to the Franklin No. 25 mine's environmental office, which was made available for use by federal mining inspectors. While there, Inspector Jeskey observed on the bulletin board a six-page list of respirable dust samples, including a record of at least six voided cassettes, which was similar to the xerox copy that he had previously received from the former employee. A short time later, Inspector Jeskey saw a company technician take a hard bound book from the desk drawer in the environmental office and place it in a pocket of the coveralls he was wearing, but the inspector was unable to ascertain what the book contained (Pet. App. 64a).

ARGUMENT

1. Petitioners contend (78-532 Pet. 19; 77-537 Pet. 20-21; 78-697 Pet. 19) that the search warrants were not supported by probable cause because there was no showing that the former employee of Consolidation was credible or that his information was reliable, as required by this Court's decisions in *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969).[8]

[8] The court of appeals did not resolve the probable cause issue, stating that although it "tend[ed] to agree" with the government that the affidavits were sufficient to provide probable cause under the *Aguilar-Spinelli* analysis if read in a commonsense fashion, there were "more compelling [reasons] for reversal than [the district court's] mere misreading of the affidavits" (Pet. App. 34a). Judge Engel, who concurred in the judgment, was "fully satisfied that the government's affidavits meet the more stringent standards of *Aguilar* and *Spinelli* and [are] sufficient to uphold the search and seizure" (*id.* at 44a).

We note at the outset that the *Aguilar-Spinelli* requirements were addressed to the particular problem of warrants issued on the basis of information provided by professional informants, and several courts have suggested that they should not be applied in "wooden fashion" (*United States* v. *Burke*, 517 F.2d 377, 380 (2d Cir. 1975) (Friendly, J.)) to other contexts where relevant information of criminal activity has been provided out of a sense of civic duty by an eyewitness to or a victim of the crime. See, *e.g.*, *United States* v. *Campbell*, 575 F.2d 505, 507 (5th Cir. 1978); *United States* v. *Swihart*, 554 F.2d 264, 268-269 (6th Cir. 1977); *United States* v. *Rollins*, 522 F.2d 160, 164 (2d Cir. 1975), cert. denied, 424 U.S. 918 (1976); *United States* v. *Darensbourg*, 520 F.2d 985, 988-989 (5th Cir. 1975); *Rutherford* v. *Cupp*, 508 F.2d 122, 123 (9th Cir. 1974), cert. denied, 421 U.S. 933 (1975); *Cundiff* v. *United States*, 501 F.2d 188, 190 (8th Cir. 1974). Here, the information was given to the agents by a person who had been privy to the commission of illegal activities in his capacity as a corporate employee. Petitioners do not suggest that he was a paid informant, that he had a motive to falsify, or that he was involved in any way in the ongoing criminal enterprise. In such circumstances, all that the Fourth Amendment requires is that the magistrate have a "substantial

basis" for crediting the informant. *United States* v. *Harris*, 403 U.S. 573, 581 (1971).

In any event, when the affidavits are read in a commonsense manner (*United States* v. *Ventresca*, 380 U.S. 102, 108 (1965)) and "the usual inferences which reasonable men draw from evidence" are made (*Johnson* v. *United States*, 333 U.S. 10, 14 (1948)), it is readily apparent that the *Aguilar-Spinelli* test was satisfied in this case.[4] As detailed above, the government's probable cause showing was based both upon the information supplied by a former company employee and upon the corroborative observations of a federal investigator.[5] The affidavits plainly afforded

[4] Of course, reviewing courts must pay deference to a magistrate's determination of probable cause when, as here, there is a substantial basis for that finding. See, *e.g.*, *United States* v. *Watson*, 423 U.S. 411, 423 (1976); *Spinelli* v. *United States*, *supra*, 393 U.S. at 419; *Jones v. United States*, 362 U.S. 257, 270-271 (1960).

[5] Although the Jeskey affidavit was submitted specifically to support only the warrant for the search of the Franklin No. 25 mine, the magistrate properly considered it, along with the Holgate affidavit, in determining whether there was probable cause to search the Georgetown district office and the other field offices and in determining whether the informant and his information were reliable. The affidavits were submitted to the magistrate at the same time and related closely to the same investigation. In such circumstances, "[i]t would be hypertechnical for the [magistrate] not to act upon an entire picture disclosed to him in interrelated affidavits presented to him on the same day." *United States* v. *Serao*, 367 F.2d 347, 350 (2d Cir. 1966), vacated on other grounds, 390 U.S. 202 (1968). See also *United States* v. *Dudek*, 560 F.2d 1288, 1292-1293 (6th Cir. 1977), cert. denied, 434 U.S. 1037 (1978); *United States* v. *Manufacturer's National Bank*, 536 F.2d 699, 702 (6th Cir. 1976), cert. denied, 429 U.S. 1039 (1977).

a sufficient basis to conclude that the former employee's information was reliable, since they stated that he had gained much of his information by first-hand observation, while other facts that he passed along to the agents could only have been obtained by personal knowledge. See *United States* v. *Jenkins*, 525 F.2d 819, 823 (6th Cir. 1975); *United States* v. *Jensen*, 432 F.2d 861, 863 (6th Cir. 1970). Thus, according to the affidavits, the employee was previously employed at the Franklin No. 25 mine, he had participated in the dust sampling program at the mine, and he had been told by his superiors to maintain a supply of extra dust cassettes collected under controlled conditions and to forward all cassette samples to Consolidation's Georgetown laboratory (Pet. App. 59a). The employee also had been informed by two named technicians at the laboratory that it was a company practice to submit fictitious dust samples to federal inspectors in other of the company's mines in the central Ohio district (*id.* at 59a-60a).[6]

Moreover, the reliability of the former employee's information was supported by its very detail. The employee described the records and their locations in the Franklin No. 25 mine office with specificity and also furnished a xerox copy of some of the records, including a list describing certain respirable cassette dust samples as "void." This information was substantially corroborated the next day when Inspector

[6] These statements may have been against the technicians' penal interests. See *United States* v. *Harris*, *supra*, 403 U.S. at 580, 583-584.

Jeskey went to the mine office and observed many of the records that the informant had previously described. *Draper* v. *United States*, 358 U.S. 307, 313 (1959). Copies of some of the documents were attached as an exhibit to the affidavit. See *Andresen* v. *Maryland*, 427 U.S. 463, 478 n.9 (1976). In sum, the affidavits here "contain[ed] a sufficient statement of the underlying circumstances" to establish probable cause to believe that Consolidation was violating the respirable dust standards of the Federal Coal Mine Health and Safety Act and that the information was based "on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on * * * general reputation." *Spinelli* v. *United States*, *supra*, 393 U.S. at 416.[7]

2. Although it is unnecessary to reach the question in view of the magistrate's issuance of search warrants upon probable cause, we believe that the searches here could properly have been undertaken without a warrant as a statutorily-authorized inspection of a "pervasively regulated business." *United States* v. *Biswell*, 406 U.S. 314, 316 (1972). See also *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970).

[7] Indeed, in light of the legal requirement that a mine operator must "promptly collect and transmit" *all* dust samples to the Department of the Interior (see 30 C.F.R. 70.260(a) (1977); 30 U.S.C. 814(i)), the information pertaining to the preparation of extra cassettes and the voiding of sample dust cassettes apparent from the records alone was sufficient to give the agents probable cause to believe that the monitoring provisions of the Act were being violated.

Colonnade Catering involved the statutory authorization for warrantless inspections of federally licensed dealers in alcoholic beverages. Federal inspectors, without a warrant or the owner's permission, had forcibly entered a locked storeroom and seized illegal liquor. After reviewing the history of federal involvement in the regulation of alcoholic beverages, the Court concluded that Congress had long exercised control over the liquor industry and had "broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand" (397 U.S. at 76). Although the Court invalidated the search in that case, it was because Congress had not specifically authorized warrantless entries in the applicable regulatory statute and had instead provided an alternative remedy, not because the Fourth Amendment would have barred such inspections if legislatively authorized. *Id.* at 77.

Similarly, in *Biswell*, the Court was faced with the warrantless search of a locked commercial storeroom during business hours as part of a federal gun control program authorized by 18 U.S.C. 923(g), which resulted in the seizure of unlicensed firearms from a federally licensed gun dealer. While federal regulation of firearms was not as deeply rooted in history as was governmental control of liquor, the Court sustained the warrantless inspection program challenged in that case because of the program's importance in the prevention of violent crime, the fact that a warrant requirement would have impeded enforcement in light of the ease with which statutory violations could

be concealed, and the limited nature of the inspection's interference with the gun dealer's right to privacy. 406 U.S. at 315-316.[8]

Here, as in *Biswell*, "[l]arge interests are at stake" (406 U.S. at 315). In the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 *et seq.*, Congress has responded to the dangers involved in coal mining—"the most hazardous occupation in the United States" (H.R. Rep. No. 91-563, 91st Cong., 1st Sess. 1 (1969)) and an "industry [with] a history of close federal regulation" (Pet. App. 40a)[9]—by requiring "frequent inspections and investigations in coal mines each year for * * * enforcement purposes" (H.R. Rep. No. 91-563, *supra*, at 7). To com-

[8] As the Court observed (406 U.S. at 316):

> It is also plain that inspections for compliance with the Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy. When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection.

[9] See *Youghiogheny and Ohio Coal Co.* v. *Morton*, 364 F. Supp. 45, 49-50, 52 (S.D. Ohio 1973) (three-judge court). The 1969 Act has recently been amended by the Federal Mine Safety and Health Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290 *et seq.*, which became effective on March 9, 1978. This statute substantially strengthens the enforcement powers of the Secretary of the Interior and the Secretary of Health, Education, and Welfare in many respects; in other respects it merely redesignates existing provisions without changing their substance. For convenience we will refer throughout to the provisions of the 1969 Act, which were in effect at the time of the searches in this case.

bat the frequent occurrence of lung disease associated with unhealthful mining practices, Congress enacted strict measures for monitoring the air in coal mines (30 U.S.C. 842) and explicitly gave federal authorities the right to enter any "coal mine" to conduct inspections and investigations to ensure compliance with the federal regulations (30 U.S.C. 813(a) and (b)).[10] To guarantee that the Act's broad remedial purposes would be effectuated, Congress expansively defined a "coal mine" to include all surface structures and facilities used in or resulting from the work of extracting coal (30 U.S.C. 802(h)).[11]

Thus, as in *Biswell*, Congress has adopted "a regulatory inspection system of business premises that is carefully limited in time, place, and scope" (406 U.S.

[10] Contrary to petitioners' claim, there is no conflict between this case and *Midwest Growers Co-op Corp.* v. *Kirkemo*, 533 F.2d 455 (9th Cir. 1976). The regulatory statute in *Midwest Growers* was found not to allow warrantless inspections, or searches pursuant to administrative warrants, because it did not provide the administrative agency with the power of entry to make its inspections. The Federal Coal Mine Health and Safety Act, by contrast, expressly grants officers a "right of entry to, upon, or through" the regulated premises as well as the power to conduct "inspection[s]" and "investigation[s]" (30 U.S.C. 813(a) and (b)(1)). Furthermore, the decision in *Marshall* v. *Barlow's, Inc.*, *supra*, demonstrates that the courts may construe regulatory statutes to provide for an administrative warrant procedure in cases where Congress has clearly authorized the government to enter business premises for the purpose of making inspections.

[11] Where Congress wished to limit the scope of inspection to the "active workings" of mines, it did so in express terms. See 30 U.S.C. 842(g).

at 315). The searches here were conducted by federal mine inspectors pursuant to this important regulatory scheme during regular business hours at surface structures intimately tied to the work of extracting coal and where records relating to the federal respirable coal dust sampling program could be found. The court of appeals properly recognized that mine operators have "virtually no expectation of privacy in records and paraphernalia which they exclusively maintain in compliance with the Act" (Pet. App. 40a-41a) and that the mine inspector's right of direct access to these records was fundamental to the statutory scheme (Pet. App. 36a):

> It follows that business records and other paraphernalia, which are maintained pursuant to the Act, are appropriate targets for periodic federal scrutiny. *Youghiogheny and Ohio Coal Company* v. *Morton*, supra at 51 n. 5. In the instant case, these materials constitute the veritable life blood of a statutory scheme which contemplates responsible, self-monitoring of working conditions by mine operators. The efficacy of the respirable dust control program, 30 U.S.C. § 842, is entirely dependent upon the integrity with which operators sample, record and report these conditions. We see no other realistic way to ensure compliance short of direct, on-site access to these records as they are *internally* maintained.

It follows that since "[t]he reasonableness of a warrantless search * * * depend[s] upon the specific enforcement needs and privacy guarantees of each [regulatory] statute" (*Marshall* v. *Barlow's Inc.*,

supra, slip op. 13), the searches here—even though authorized by warrants issued on probable cause—were independently sanctioned by a valid inspection statute and could have been carried out even without the warrant.[12]

3. Petitioners argue (78-532 Pet. 8-12; 78-537 Pet. 16-17; 78-697 Pet. 18) that the court of appeals erred in holding that, in light of the "regulatory character" of the searches in this case, issuance of the search warrants could be sustained "upon a lesser showing of probable cause comparable to that required to obtain a warrant to perform a periodic, administrative inspection of a commercial establishment. *See* v. *City of Seattle*, 387 U.S. 541, 545 (1967)" (Pet. App. 35a). As we have demonstrated above, however, the warrants here were supported by the traditional standard of probable cause applicable to non-administrative searches, and, in any event, the searches were permissible under the *Colonnade-Biswell* exception to the warrant requirement. Thus, regardless of the correctness of the court of appeals'

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[12] *Marshall* v. *Barlow's, Inc.*, *supra*, is not inconsistent with this position. Although the Court held in *Barlow's* that the warrantless searches authorized by the Occupational Safety and Health Act of 1970, 84 Stat. 1590, as amended, 29 U.S.C. 651 *et seq.*, did not fit within the *Colonnade-Biswell* exception to the warrant requirement, it expressly noted that its decision was based "on the facts and law concerned with OSHA" (slip op. 14) and that a different result might occur where the regulatory statute involved applied only to a single closely regulated industry, as does the Mine Safety Act (*id.* at 13-14).

conclusion,[13] it is unnecessary for this Court to reach the question whether the searches could also be upheld as pursuant to administrative search warrants issued under the authority of the Mine Safety Act.[14]

[13] We are aware of no other appellate decision that has considered the availability of administrative warrants under the Mine Safety Act. While petitioners, relying on *Michigan* v. *Tyler*, *supra*, argue that such warrants may not issue in any case where the search is "predicated upon overt criminal suspicion" and is "for the purpose of obtaining evidence of criminal activity" (78-537 Pet. 17), it is anomalous to maintain that the authority to search is broader when there is less reason to suspect a criminal violation. Cf. *Scott* v. *United States*, 436 U.S. 128, 136-138 (1978). Indeed, Section 109(b) of the Act (30 U.S.C. 819(b)) makes it a criminal offense for a coal mine operator willfully to violate a mandatory health standard. Thus, there is always the possibility that an inspection under 30 U.S.C. 813 will uncover a criminal violation. Whether or not an inspector has reason to suspect that a criminal violation has occurred, if the purpose of the search remains at least in part to determine if there has been compliance with the health and safety standards of the Act, then an administrative warrant should be adequate. See *United States* v. *Prendergast*, No. 78-1357 (3d Cir. Sept. 29, 1978), slip op. 3-4; *United States* v. *Goldfine*, 538 F.2d 815, 819 (9th Cir. 1976). Such initial inspections are similar to "entries to investigate the cause of the fire" in *Michigan* v. *Tyler*, *supra*, slip op. 12, for which the Court found that an administrative warrant would suffice, rather than to the "further access to gather evidence for a possible prosecution" (*ibid.*), for which a traditional showing of probable cause was required.

[14] Thus, we agree with the concurring opinion of Judge Engel in the court below, who concluded that, because the government agents' affidavit met "the more stringent standards of *Aguilar* and *Spinelli*," there is no occasion to consider the administrative search question in this case (Pet. App. 44a).

4. Relying on the arguments he presented in his earlier petition (Pet. No. 77-606), petitioner Marks asserts (78-697 Pet. 19-20) that he has standing to contest each of the six searches.[15] This issue was not decided by the court of appeals (Pet. App. 32a n.7) and need not be considered by this Court, since, as we have shown, the searches of Consolidation's property did not violate the Fourth Amendment. Petitioner's claim is, in any event, without merit.

Throughout the course of these proceedings, the government has acknowledged that petitioners Marks and Zitko have standing to object to the introduction of evidence seized from their personal offices at the company's district headquarters at Georgetown, Ohio. Relying on *Mancusi* v. *DeForte*, 392 U.S. 364 (1968), petitioner Marks contends that he also has standing to challenge the legality of the searches at the five mine sites because, as an environmental officer for the company, he was ultimately responsible for its respirable dust records and periodically visited the five field offices. This contention is incorrect.

In *Brown* v. *United States*, 411 U.S. 223, 229 (1973), the Court repeated the general rule that a defendant is not a "person aggrieved by an unlawful search or seizure" (Fed. R. Crim. P. 41(e)) unless he is able to show that he was on the premises at the time of the contested search or seizure, had a proprietary or possessory interest in the premises searched,

[15] Although petitioner Zitko does not raise the standing issue in this Court, his position is identical to that of petitioner Marks, and our argument is equally applicable to both petitioners.

or was charged with an offense that included, as an essential element, possession of the seized evidence at the time of the alleged Fourth Amendment violation. This rule was applied in *DeForte* in the context of the search of a private office shared by DeForte and other union officials and the seizure of union records. In concluding that DeForte could properly challenge the search, the Court observed that "[i]t has long been settled that one has standing to object to a search of his office [and] * * * that the situation was not fundamentally changed because DeForte shared an office with other union officers" (392 U.S. at 369). The Court specifically noted that DeForte was present when the search occurred (*id.* at 365), that he had "spent 'a considerable amount of time' in the office and that he had custody of the papers at the moment of their seizure" (*id.* at 368-369; footnote omitted). In these circumstances, the Court concluded that he had "a reasonable expectation of freedom from governmental intrusion" (*id.* at 368) in the area searched. See *United States* v. *Stull*, 521 F.2d 687, 692 (6th Cir. 1975), cert. denied, 423 U.S. 1059 (1976).

Thus, the simple allegation of a "supervisory" responsibility over the general area searched does not give a corporate official standing to contest the seizure of corporate records, because *DeForte* requires "a demonstrated nexus between the area searched and the work space of the defendant." *United States* v. *Britt*, 508 F.2d 1052, 1056 (5th Cir.), cert. denied, 423 U.S. 825 (1975). See also *United States* v.

Cella, 568 F.2d 1266, 1282-1283 (9th Cir. 1977); *Lagow* v. *United States*, 159 F.2d 245, 246 (2d Cir. 1946), cert. denied, 331 U.S. 858 (1947). Here, there was no such nexus between petitioners Marks or Zitko and the five field offices. Neither petitioner was present at any of these sites when the searches occurred and neither of them maintained a personal office in those locations. They therefore have standing to seek suppression only of the evidence obtained at their own work areas in Consolidation's district office in Georgetown.[16]

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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[16] Petitioner Marks (77-606 Pet. 19-20) also misperceives the automatic standing rule announced in *Jones* v. *United States*, 362 U.S. 257, 263 (1960). Petitioner was not charged with any offense that contains, as an essential element, possession of the seized evidence at the time of the contested search and seizure. Contrary to his apparent belief, he cannot claim standing merely because the seized evidence might be introduced against him at trial.

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